

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KIERAN GOMEZ,

Plaintiff,

9:06-CV-0900
(LEK/GJD)

v.

MICHAEL HOLM; McCULLY, *Lt.*;
and JAMES MORRISSEY, *Supt.*,

Defendants.

APPEARANCES:

KIERAN GOMEZ
Plaintiff, *pro se*

HON. ANDREW M. CUOMO
New York State Attorney General
Attorney for Defendants

LAWRENCE E. KAHN, U.S. District Judge

OF COUNSEL:

JAMES SEAMAN, ESQ.
Assistant Attorney General

DECISION AND ORDER

Presently before the Court is a *pro se* civil rights Complaint filed by Plaintiff Kieran Gomez (“Plaintiff”) (Dkt. No. 1), and transferred to this District from the Western District of New York (“Western District”) by Order of the Honorable Leslie G. Foschio, United States Magistrate Judge for the Western District (Dkt. No. 10).

By way of background, Plaintiff commenced this action by filing a Complaint, together with an *in forma pauperis* application, in the Western District on January 24, 2005. By Order of the Honorable John T. Elfvin, United States District Judge for the Western District, dated June 3,

2005: (1) Plaintiff's *in forma pauperis* application was granted;¹ (2) Plaintiff's due process claims were "dismissed in their entirety with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A"; and (3) the United States Marshal was "directed to serve the summons and complaint on Holm, McCully and Morrissey regarding the remaining First Amendment claim." June 2005 Order (Dkt. No. 4).

Defendants subsequently filed a motion in the Western District seeking a change of venue to the Northern District of New York. See Dkt. No. 5. Plaintiff responded to the Motion, consenting to the change of venue. See Dkt. No. 9. By Order of Magistrate Judge Foschio, dated July 18, 2006, this action was transferred to the Northern District. See Dkt. No. 10.

WHEREFORE, it is hereby

ORDERED, that in accordance with the June 3, 2005 Order of District Judge John T. Elvin, of the Western District, Plaintiff's due process claims are **DISMISSED IN THEIR ENTIRETY WITH PREJUDICE**; and it is further

ORDERED, that Defendants shall file a Response to the Complaint **WITHIN THIRTY (30) DAYS** of the filing date of this Order; and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a

¹ It appears that the Western District accepted Plaintiff's authorization form, which stated the filing fee to be \$150.00, because Plaintiff's Complaint was signed on January 7, 2005, when the required filing fee was still \$150.00. That filing fee has been paid in full. See, inter alia, Complaint (Dkt. No. 1); Auth. Form (Dkt. No. 3).

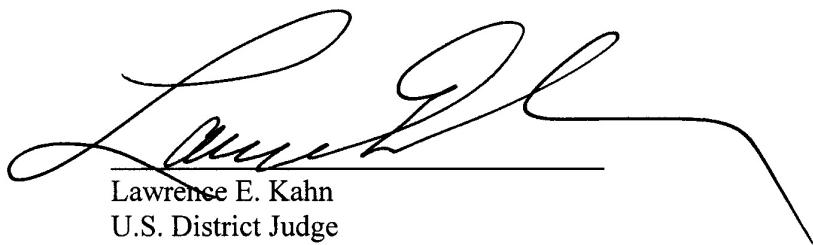
true and correct copy of same was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be returned, without processing. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules.

Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; his failure to do so will result in the dismissal of this action. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: January 23, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge